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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1942

No. 136

HARE TRUST, AN EXPRESS TRUST, *Petitioner*,

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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THE McQUEEN PRESS

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This is a petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia, involving a decision by that Court in the case of *Hare Trust, An Express Trust*, v. *Helvering, et al.* No. 7,869, wherein that Court affirmed a decision of the United States Board of Tax Appeals.

OPINIONS BELOW.

The opinion of the Court of Appeals (R. 83–4) is reported at —— App. D. C. ———, 126 F. (2d) 530, and the opinion of the Board of Tax Appeals (R. 27–35) is unreported.

JURISDICTION.

The opinion of the Court of Appeals was entered March 9, 1942 (R. 83), and the judgment of the Court was entered

on the same day (R. 84). This petition is taken pursuant to Section 240 (a) of the Judicial Code (36 Stat. 1157, Sec. 240 (a), as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U.S.C.A. Sec. 347), and within the three months period from the date of entry of judgment in the lower Court as provided by Section 8 of the Act of February 13, 1925, c. 229 (43 Stat. 940, 28 U.S.C.A. Sec. 350).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The questions involved in this case are similar to those involved in *Second Carey Trust, An Express Trust*, v. *Helvering, et al.* in which petition for certiorari is filed concurrently with this petition. The tax years involved are 1933 and 1934.

The petitioner was created on August 13, 1932, by "Trust Conveyance Creating Hare Trust" (R. 55–73) as an express trust under Sections 11,820–23 of the Oklahoma Statutes, 1931. By said trust instrument the Royalty Service Corporation, Ltd., conveyed to the Southwest Company (an express trust) as trustee an undivided 7/48ths interest in a 7/8ths interest in an oil and gas lease. As consideration for the transfer, Royalty Service Corporation, Ltd., became the owner of the 800 units of beneficial interest in petitioner with the right to sell them and with the proviso that Royalty might at any time surrender its units to the trustee and take over a proportionate share of the property. The same privilege was extended to any owner of 300 or more units. (R. 28–9, 31, 56–7, 61).

On September 1, 1933, Royalty surrendered 400 units of beneficial interest to petitioner's trustee and received therefor an undivided one-half interest in the trust property. Thereafter petitioner owned only a 7/96ths interest of the aforesaid 7/8ths interest in the lease. (R. 78).

There was one producing well on the property in August, 1932, and the operation of the lease and well was being carried on by Phillips Petroleum Company under an operating contract made prior thereto with Royalty Service Corporation,

Ltd. Neither petitioner nor its trustee had any voice in the operation and management of the property. No other wells were drilled on the property. (R. 29, 48–50.)

The provisions of the Hare Trust instrument are in other respects similar to the provisions of the instrument creating Second Carey Trust, except that petitioner (Hare Trust) did not acquire any interest in non-producing leases. The activities of the trust and trustees during the taxable years were also similar to those involved in the Second Carey Trust case. This activity consisted only of receiving petitioner's share of oil and gas proceeds and distributing it to the unit holders.

Respondent, the Board, and the lower Court all held that petitioner is an association taxable as a corporation. (R. 23, 32–33, 84.)

Petitioner filed income tax returns for 1933 and 1934 as a trust on Form 1040 (R. 12, 22). It did not file capital stock tax returns (required of corporations) because it did not consider itself as anything but a trust. After the Board's holding that it was taxable as a corporation, petitioner filed capital stock tax returns and paid the taxes assessed thereon (R. 39).

Respondent did not allow any exemption for a capital stock value in computing excess profits tax and did not allow deductions for depreciation and depletion based upon cost, although the data to substantiate such deductions was available to him. (R. 13, 23, 52, 77–78.) Petitioner has been allowed depletion for both years on the percentage basis. (R. 33–34.)

The further question is whether the case should be remanded to the Board for rehearing to determine the deductions which are allowable to petitioner in the taxable years and the exemption (12½% of its capital stock value) to which it is entitled in computing its excess profits tax for both years. The attorney representing petitioner at the time of the hearing proceeded, as in the *Second Carey Trust* case, on the theory that the primary question was whether petitioner was taxable as a trust or a corporation; and that, after that question was decided, a further hearing would be held, if necessary, to determine the correct tax liability. Accordingly, he did not submit at the

hearing the evidence necessary to establish the deductions and the exemption against excess-profit tax. Petitioner filed the same motions for further hearing (R. 25–26, 35–37, 38–41) as in the *Second Carey Trust* case.

QUESTIONS PRESENTED.

The questions presented are:

1. Is petitioner a trust and taxable as a trust, or is it an association taxable as a corporation?

2. Even if petitioner is held to be an association taxable as a corporation, should the case be remanded to the Board to determine petitioner's correct income and excess profits tax liability for 1933 and 1934?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

Both of the questions presented in this case are present in *Second Carey Trust, et al.* v. *Helvering, et al.* and petitioner relies for allowance of the writ of certiorari upon the first, second, third, and sixth reasons set out in the petition for writ of certiorari in that case.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

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